

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION  
AND SUBSTANCE ABUSE SERVICES

Office of Administrative Services

P. O. Box 1797

Richmond, Virginia 23218-1797

NOTICE OF CONTRACT AWARD

Contract #720C-04080-07R-00

The following contract has been awarded. The primary intent of this contract is to provide annual maintenance for CBORD and Sybase food service software at 12 DMHMRSAS facilities.

**CONTRACT:** Annual Maintenance and Support for CBORD Software

**USING FACILITIES:** DMHMRSAS Facilities

**CONTRACTOR:** CBORD Group, Inc.  
61 Brown Road  
Ithaca, NY 14850  
Phone: 607-257-2410  
FAX: 607-257-1902  
Contact: Chris Curkendal  
E-Mail: csc@CBORD.com  
FIN: 201231681

**CONTRACT PERIOD:** January 1, 2007 through December 31, 2007

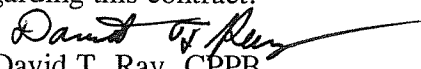
**TERMS:** Net 30 days.

**CONTRACT RENEWAL:** This contract may be renewed for four additional periods of one year each.

**CONTRACT:** Attached

**COST OF SERVICES:** See Attachment A of the Contract.

Please contact the undersigned at 804-786-5207 or at dave.ray@co.dmhmrssas.virginia.gov if you have any questions or wish to report any problems regarding this contract.

By:   
David T. Ray, CPPB

Date: August 10, 2006

COMMONWEALTH OF VIRGINIA  
STANDARD CONTRACT

This contract entered into July 21, 2006, by the CBORD Group hereinafter referred to as the "Contractor" and the Virginia Information Technology Agency on behalf of the Department of Mental Health, Mental Retardation and Substance Abuse Services hereinafter referred to as the "DMHMRSAS".

WITNESSETH that the Contractor and DMHMRSAS, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide the services to DMHMRSAS facilities located throughout the Commonwealth as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From January 1, 2007 through December 31, 2007, with the option to renew for additional one (1) year periods.

This contract documents shall consist of:

1. This signed form:
2. Compensation (Attachment A)
3. Terms and Conditions (Attachment B)

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

VITA  
ON BEHALF OF THE  
DEPARTMENT OF MENTAL  
HEALTH, MENTAL RETARDATION  
AND SUBSTANCE ABUSE  
SERVICES:

CONTRACTOR:

By: The CBORD Group, Inc.

Name: [Signature]

Title: Timothy A. Tighe, President

Date: 7/21/06

By: [Signature]

Name: Don C. [Signature]

Title: Director, Security Management

Date: 7-26-06

## Attachment A

CBORD Software Maintenance Cost  
~~VA-060727-TCG~~  
 Contract VA-041594-TCB (DMHMRSAS's Contract  
 Number - #720C-04080-07R-00)

Facility	2006	2007
Catawba Hospital Includes: CBORD System, Sybase Server (1) and Sybase Workstations (5)	\$6,240.98	\$6,453.17
Central Virginia Training Center Includes: CBORD System, Sybase Server (1) and Sybase Workstations (4)	\$8,086.33	\$8,361.27
Eastern State Hospital Includes: CBORD System, Sybase Server (1) and Sybase Workstations (6)	\$8,189.81	\$8,468.26
Northern Virginia Mental Health Institute Includes: CBORD System, Sybase Server (1) and Sybase Workstations (2)	\$4,661.88	\$4,820.38
Northern Virginia Training Center Includes: CBORD System, Sybase Server (1) and Sybase Workstations (5)	\$6,240.98	\$6,453.17
Petersburg Complex Includes: CBORD System, Sybase Server (1) and Sybase Workstations (9)	\$8,138.07	\$8,414.76
Piedmont Geriatric Hospital Includes: CBORD System, Sybase Server (1) and Sybase Workstations (3)	\$6,137.50	\$6,346.18
Southeastern Virginia Training Center Includes: CBORD System, Sybase Server (1) and Sybase Workstations (5)	\$6,240.98	\$6,453.17
Southern Virginia Mental Health Institute Includes: CBORD System, Sybase Server (1) and Sybase Workstations (1)	\$4,598.28	\$4,754.62
Southwestern Virginia Mental Health Institute Includes: CBORD System, Sybase Server (1) and Sybase Workstations (4)	\$6,188.71	\$6,399.13

Southwestern Virginia Training Center  
Includes: CBORD System, Sybase Server (1)  
and Sybase Workstations (4)

\$6,188.71	\$6,399.13
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Western State Hospital  
Includes: CBORD System, Sybase Server (1)  
and Sybase Workstations (7)

\$8,241.53	\$8,521.74
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Commonwealth of Virginia DMHMRSAS  
Includes: CBORD System, and Sybase Workstations (8)

\$ 0.00
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**YEARLY TOTAL FEE**

<b>\$79,153.77</b>	<b>\$81,844.98</b>
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DAILY RATE FOR ON-SITE TRAINING

\$1,250.00 (Includes  
travel, lodging and out of  
pocket expenses.

DAILY RATE FOR PROJECT MANAGEMENT

\$1600.00 (Includes travel,  
lodging and out of pocket  
expenses.

**Ray, Dave**

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**From:** Searce, Gregory [Gregory.Searce@vita.virginia.gov]  
**Sent:** Thursday, July 27, 2006 11:35 AM  
**To:** Dave.Ray@co.dmhmrsas.virginia.gov  
**Subject:** New Contract with CBORD

Dave,

Just wanted to provide you the contract number for your maintenance starting in 2007 with CBORD. The contract number is VA-060727-TCG. Please make sure that you reference this number when entering the order in eVA.

Thanks

Greg Searce, VCO  
Strategic Sourcing Specialist  
Virginia Information Technologies Agency  
110 S. 7<sup>th</sup> Street  
Richmond, VA 23219

Office: 804.371.5919  
[gregory.searce@vita.virginia.gov](mailto:gregory.searce@vita.virginia.gov)

## Attachment B

### General Terms and Conditions

1. **INCORPORATED CONTRACTUAL PROVISIONS**

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference:

[http://www.vita.virginia.gov/procurement/documents/terms\\_06-07sw.pdf](http://www.vita.virginia.gov/procurement/documents/terms_06-07sw.pdf)

The contractual claims provision §2.2-4363 of the Code of Virginia is also incorporated by reference.

2. **TRAINING**: Contractor shall provide one free paid admission to the user group conference in Ithaca, New York for each year the contract is in force. Contractor will also sponsor a one-day regional user group conference (location to be determined by DMHMRSAS) every calendar year at no charge with at least one CBORD employee attending.
3. **PROJECT MANAGEMENT**: Contractor agrees to provide at no charge a quarterly implementation status update deliverable report, whereby CBORD is responsible for contacting all sites, ascertaining implementation status, and providing recommendations. The first quarterly report is due by January 12, 2007 and every three months thereafter, for the term of the contract.
4. **ADVERTISING**: In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to DMHMRSAS will be used in product literature or advertising. The Contractor shall not, without the expressed written approval of the Agency Head of DMHMRSAS, state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
5. **ASSIGNMENT OF CONTRACT**: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
6. **AUDIT**: The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. DMHMRSAS, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
7. **AVAILABILITY OF FUNDS**: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

8. **CANCELLATION OF CONTRACT:** DMHMRSAS or VITA reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
9. **COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPPA):** Contractor agrees to comply with all applicable provisions of the Health Insurance Portability and Accountability act of 1999 (HIPPA) and, in the performance of this contract shall:
- Not use or further disclose protected health information (PHI) other than as permitted or required by the terms of this contract or as required by law.
  - Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this contract
  - Report to DMHMRSAS any use or disclosure of PHI not provided for by this contract
  - Mitigate, to the extent possible, any harmful effect that is known to the contractor of a use or disclosure of PHI by the contractor in violation of the requirements of this contract
  - Impose the same requirement and restrictions contained in this contract on its employees/agents/ and subcontractors.
  - Provide access to PHI contained in its records to DMHMRSAS, in a time and manner designated by DMHMRSAS, or at the request of DMHMRSAS, to an individual in order to meet HIPPA requirements
  - Make available PHI in its records to DMHMRSAS for amendment and incorporate any amendments to PHI in its records at DMHMRSAS' request
  - Document and provide DMHMRSAS information relating to disclosures of PHI as required for DMHMRSAS to respond to a request by and individual for an accounting o disclosures of PHI in accordance with the HIPPA Privacy Rule
  - Make its internal practices, books and records relating to use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services Secretary for the purpose for determining compliance wit the HIPPA Privacy Rule
  - Upon termination of this contract, if feasible, return or destroy all PHI received from, or created or received by the Contractor on behalf of DMHMRSAS that the Contractor maintains in any form. Contractor will retain no copies of such information, or if such return or destruction is not feasible, extend the protections of this contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

10. **CONFIDENTIALITY (Commonwealth):** The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with § 2.2-4342F of the Code of Virginia. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.
11. **CONFIDENTIALITY (Contractor):** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.
12. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the Commonwealth may have.
13. **DEFINITION - SOFTWARE:** As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.
14. **LATEST SOFTWARE VERSION:** Contractor shall periodically notify DMHMRSAS of the availability of newer versions of the system software that has been released for use by its customers generally and shall, within 60 days of written request by DMHMRSAS, supply DMHMRSAS with such new version. The materials shall be provided to DMHMRSAS in the same form and quality as originally delivered, without additional charge to DMHMRSAS. Contractor will assist DMHMRSAS by phone in its performance of installing requested new software version.
15. **LIMITATION OF USE:** The Commonwealth's right to use computer software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding any provision to the contrary however, the Commonwealth shall have at a minimum: unlimited use of the



software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunction, or is otherwise rendered inoperable; upon written notification and authorization from the Contractor, the Commonwealth may use the software at another Commonwealth site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the Commonwealth. In the event of any actual or alleged breach by the Commonwealth, the contractor's sole remedy shall be to pursue a monetary claim in accordance with § 2.2-4363 of the Code of Virginia.

16. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
17. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for an additional one-year period(s) under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases for the annual maintenance of the CBORD software system may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
  1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the "Other Services" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
  2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the "Other Services" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
18. **RENEWAL OF MAINTENANCE:** Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional one-year period(s), under the terms

and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by more than the percentage increase or decrease in the "Other Services" category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve months for which statistics are available.

19. **SERVICE PERIOD (EXTENDED):** Due to the criticality of the application for which the equipment and/or software is purchased, the contractor shall provide 24 hours a day, 7 days a week, maintenance support, including state holidays.
20. **SERVICE PERIOD (ROUTINE):** Contractor shall provide 24 hour phone support with a one hour call response time.

CBORD shall provide the following services for the term of this Agreement:

- (a) **Telephone Support:** CBORD shall provide telephone support seven (7) days a week, twenty-four (24) hours per day. CBORD's Support Center will be staffed by CBORD personnel who are knowledgeable in the System.
- (b) **Call Tracking/reporting.** CBORD Support Center personnel will log each call received from Customer and will track the status of each call until CBORD and Customer agree that the support issue has been successfully resolved. Unless otherwise agreed to by the parties, CBORD will provide Customer with access to reports via the Internet showing a) Software support calls received by CBORD during the previous month; b) status of such calls (e.g. Open/Closed); c) time elapsed between opening/closing of trouble call and d) summary of problem resolution.
- (c) **Priority Level of Errors/Resolution Classification:** CBORD shall provide an Error Correction designed to solve, or by-pass a reported Error based on the resolution times for Priority A and B Errors and commercially reasonable efforts to resolve a problem based on the resolution times for Priority C Errors, from the initial call, as indicated below. CBORD shall determine the priority level of Errors based on the following protocols:

Priority Classification	Response Time	Resolution Plan Time (a plan agreed upon by both parties)
<u>Priority A Errors:</u> an Error that renders the Systems inoperative or causes it to fail catastrophically severely limiting Customer's business operations.	1 Hour	1 Day with 24x7 support or until resolved
<u>Priority B Errors:</u> an Error that materially affects the performance of the System, but does not prohibit Customer's use of the System.	1 Hour	5 Days with 24x7 support or until resolved
<u>Priority C Errors:</u> an Error that causes only	1 Hour	Next release

minor impact on the use of the System.		of System Software (to be agreed upon by both parties)
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- (d) Problem Escalation Guidelines: Based on the Priority of the problem and the length of time such problem remains unresolved, the parties agree that problem ownership should be escalated to the following level of personnel and management.

Elapsed Time from CBORD Receipt of Call	for Priority A Errors, Escalate to:	for Priority B Errors, Escalate to:
1 day	CBORD Software Support personnel	CBORD Software Support personnel
2 days	CBORD Support Manager and Customer Project Leader	CBORD Software Support personnel
3 days	CBORD Technical Director and Customer IS Senior Manager	CBORD Support Manager and Customer Project Leader

21. **SERVICE REPORTS**: Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.
22. **SMALL, WOMEN, AND MINORITY-OWNED BUSINESSES SUBCONTRACTING REPORTING**:  
Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses. If SWAM subcontractors are used, the prime contractor agrees to report the use of SWAM subcontractors by providing the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided.
23. **SOFTWARE DISPOSITION**: Unless otherwise instructed by the contractor, the Commonwealth shall render unusable all copies of software acquired under the contract within thirty (30) days of termination of its license.
24. **SOFTWARE UPGRADES**: The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total

difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.

25. **SOURCE CODE:** In the event neither CBORD nor any successor (by operation of law or otherwise) to the business is ready, willing and able to fulfill the obligations of CBORD under the terms of this Agreement, CBORD agrees to make available to DMHMRSAS without charge the source code of the System, provided however that so long as CBORD or any such successor shall be proceeding with due diligence and in good faith to fulfill such obligations, it shall be deemed to be ready, willing and able to fulfill CBORD's obligations hereunder. In the event such source code is made available pursuant to the terms of this Section, the provisions relating to confidential information shall apply to DMHMRSAS' use of such source code, except that it shall not prohibit DMHMRSAS' modification of such source code for its own use. The system source code shall be held in an escrow account by CBORD.
26. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the DMHMRSAS. In the event that the Contractor desires to subcontract some part of the work specified herein, the contractor shall furnish DMHMRSAS the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
27. **SYBASE EMBEDDED RUNTIME PROGRAMS:**
1. DMHMRSAS is granted a non-exclusive, non-transferable right to use the Sybase Embedded Runtime Programs ("Program") for its own internal business purposes. DMHMRSAS may only use the Program with, and as part of, CBORD Systems, and is prohibited from using such Programs for application development, modification or customization, or running programs other than CBORD systems.
  2. DMHMRSAS' use of the Programs shall be restricted to once licensed server per site and the number of workstations listed in Attachment A "Scope of Work" of this contract. DMHMRSAS shall be prohibited from sublicensing, timesharing, rental, facility management or service bureau usage of the program.
  3. CBORD's licensor, Sybase, retains title to the Programs and all copies thereof, and associated intellectual property rights therein. DMHMRSAS may not copy the Programs, except for inactive backup and archival purposes, and must include on all copies of the Program all copyright, government restricted rights and other proprietary notices or legends included in the Program when it was shipped to CBORD.

4. Sybase shall not be responsible for any indirect, incidental, special or consequential damages.
  5. Only object code versions of the Program are licensed to DMHRSAS, and reverse engineering, disassembly or de-compilation to derive source code shall be prohibited (except to the extent expressly allowed under applicable law).
  6. DMHMRSAS agrees to apply with all export and re-export restrictions and regulations imposed by the Government of the United States. If any Program license is provided to the U.S. Government, licensee use, duplication or disclosure of the software and documentation by the U.S. government shall be provided subject to terms and conditions consistent with these terms and any applicable FAR provisions, for example FAR 52.22719.
  7. Although copyrighted, the Program is unpublished and contains proprietary and confidential information of CBORD and its licensor, Sybase. DMHMRSAS agrees to maintain the program in confidence and shall exercise a reasonable degree of care to protect the confidentiality of the Program.
  8. Upon termination of the Contract, DMHMRSAS shall be required to destroy or return all copies of the Program.
  9. CBORD shall have the right to conduct and/or direct and independent accounting firm to conduct, during normal business hours, an audit of the appropriate records of the DMHMRSAS facility to verify the number of copies of the Program in use, the computer systems on which such systems are installed, and the number of seats. CBORD shall provide DMHMRSAS a written notice of any such audit and such audit shall be conducted at least two business days after the receipt of written notification by the DMHMRSAS facility. DMHMRSAS facility patient records or other DMHMRSAS facility-specific records shall not be subject to audit without the written approval of DMHMRSAS.
28. **SYSTEM MAINTENANCE:** If DMHMRSAS shall discover an error in the coding or logic of the system software as delivered to DMHMRSAS that prevents the system software from performing substantially in accordance with the User's Guide, DMHMRSAS will notify the Contractor of the error and on request by the Contractor will deliver its analysis thereof accompanied by complete data listings, screen listings and sample runs exhibiting the error. Upon receipt of such notice, the Contractor shall, within 10 calendar days, respond at its option in one of the following ways and deliver to DMHMRSAS:

1. An updated version of the system software that corrects the error or;
2. Procedures for avoiding the apparent error until such error is corrected in a subsequent release of the system software.

29. **TERM AND TERMINATION:** This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of one (1) year. This Contract may be extended for an additional one-year period(s) after the expiration of the initial one (1) year period. DMHMRSAS will issue a written notification to the Supplier stating the extension period, 30 days prior to the expiration of any current term.

DMHMRSAS or VITA may terminate this Contract, in whole or in part, upon not less than (30) days prior written notice at any time for any reason. Supplier shall submit any contractual dispute to DMHMRSAS for resolution according to the terms of the Dispute Resolution Section. Upon termination, DMHMRSAS shall have no future liability except for Services rendered or Software delivered by Supplier prior to the termination date.

30. **TERM OF SOFTWARE LICENSE:** The term of the software license shall continue in perpetuity based on the payment of annual maintenance fees by the Commonwealth of Virginia. The software must be returned to CBORD upon the non-payment of annual maintenance fees, whereas the contract shall be terminated.

31. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

32. **THIRD PARTY ACQUISITION OF SOFTWARE:** The Contractor shall notify DMHMRSAS in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The Contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.

33. **TITLE TO SOFTWARE:** The Contractor shall represent and warrant that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.

34. **WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.
35. **WARRANTY-LIMITATIONS OF LIABILITY:** CBORD warrants the system and the material supplied in conjunction therewith to be free from any defects in materials or workmanship or programming at the time of delivery, and in the event of any such defect, remedies available to DMHMRSAS shall be provided for herein. The system licensed hereunder shall conform to the system specifications in accordance with the agreement at the time of delivery to DMHMRSAS. CBORD agrees to correct any and all defects in the system. CBORD shall not be liable for any defects in the event that the system is changed or altered in any respect by anyone other than an authorized agent of CBORD. CBORD shall not be liable in any respect for any damages arising from the furnishing by DMHMRSAS of incorrect information submitted and used as input to the system.
36. **VENDOR'S MANUAL:** This contract is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the Vendor's Manual is normally available for review at DMHMRSAS and in addition a copy can be obtained by calling the Division of Purchasing and Supply (804) 786-3845. The appeals and disputes procedures set forth in the DMHMRSAS Standard Administrative Practices and Procedures Manual, Chapter 5-Contractual Services, are applicable to this contract. A copy of this chapter is available for review in the offices of DMHMRSAS.

**CONTRACTUAL TERMS AND CONDITIONS REQUIRED BY THE CODE OF VIRGINIA  
AS IN EFFECT JULY 1, 2005 THROUGH JUNE 30, 2006**

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**1. APPLICABLE LAWS AND COURTS - §2.2-4364(E)**

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

**2. ANTI-DISCRIMINATION - §2.2-4343(1)(E), §2.2-4310 and §2.2-4311**

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body.

In every Contract over \$10,000 the provisions in a. and b. below apply:

- a. During the performance of this Contract, the Contractor agrees as follows:
  - 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.



- b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

### **3. ETHICS IN PUBLIC CONTRACTING - §2.2-4367**

By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

### **4. IMMIGRATION REFORM AND CONTROL ACT OF 1986 – required by federal law**

By submitting their bids, bidders certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

### **5. DEBARMENT STATUS - §2.2-4321**

By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

### **6. ANTITRUST – required by federal law**

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

### **7. PAYMENT - §2.2-4363 and §2.2-4354**

- a. To Prime Contractor:

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute.

b. To Subcontractors:

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
  - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
  - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- 2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier

Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

**8. MODIFICATIONS - §2.2-4309**

This contract maybe modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives authorized to do so. No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

**9. USE OF BRAND NAMES - §2.2-4315**

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible to clearly specify and identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product offered is an equal product, such bid will be considered to offer the brand name product referenced in the solicitation.

**10. INSURANCE - §2.2-4332 and §65.2-800 et seq.**

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**INSURANCE COVERAGES AND LIMITS REQUIRED:**

- a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
- b. Employer's Liability - \$100,000.
- c. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- d. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

**11. ANNOUNCEMENT OF AWARD - §2.2-4300 et seq.**

Upon the award or the announcement of the decision to award a contract over \$30,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.state.va.us](http://www.eva.state.va.us)) for a minimum of 10 days.

**12. DRUG-FREE WORKPLACE - §2.2-4312**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

**13. NONDISCRIMINATION OF CONTRACTORS - §2.2-4343.1(H)**

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and

an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

#### **14. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION - §2.2-4301**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.

- a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding.
- b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

#### **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:**

It is anticipated that the contract will result in multiple eVA purchase orders (i.e., one for each delivery requirement) with the 1% transaction fee capped at \$500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

Failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

- a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from [www.eva.state.va.us](http://www.eva.state.va.us). AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.
- b. Provide an electronic catalog (price list) or index page catalog for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from [www.eva.state.va.us](http://www.eva.state.va.us). Contractors should e-mail Catalog or Index Page information to [eva-catalog-manager@dgs.state.va.us](mailto:eva-catalog-manager@dgs.state.va.us).

**15. NONVISUAL ACCESS TO TECHNOLOGY and Section 508 Compliance: §2.2-3500 - §2.2-3504**

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

- (i) Effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) The Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

“All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the “Technology”) shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia.”

**Order No. EP151119-**

Issued on Wed Aug 09 09:51:59 EDT 2006

eVA Req#: PR1529171

Created on Wed Aug 09 09:51:59 EDT 2006 by Ray, David

**Supplier:**

THE CBORD GROUP INC

61 BROWN ROAD

ITHACA NY 14850

United States

Phone: (607) 257-2410

Fax: (607) 257-1902

Contact: \* THE CBORD GROUP INC

Vendor TIN: 201231681

**Ordering Person:**Department of Mental Health Mental Retardation and  
Ray, David

Phone: 804-786-5207

E-mail: Dave.Ray@co.dmhmrsas.virginia.gov

Item	Item Number	Description	Need By	Quantity	Unit	Unit Price	Extended Amount	Contract Number
1		Annual Maintenance for CBORD and Sybase food service software applications at 12 DMHMRSAS facilities. Services shall be provided in accordance with VITA contract # VA-060727.		1	each	\$ 81,844.98 USD	\$ 81,844.98 USD	720C-04080-07R-00
<b>Ship To:</b> Department of Mental Health 1220 Bank Street, 2nd Floor Richmond, VA 23219 United States Phone: Fax: Deliver To: David Ray			<b>Bill To:</b> DMHMRSAS Central Office Finance Office Accounts Payable, PO Box 1797 Richmond, VA 23218-1797 United States Phone: Fax:					
Line	Comments:							
	CBORD Group shall involve DMHMRSAS Central Office. DMHMRSAS Central Office shall IAT the facilities.							
							<b>Total :</b>	\$ 81,844.98 USD

**Status: Ordered**

This order is governed in all respects by the laws of the Commonwealth of Virginia, including the Virginia Public Procurement Act, the Commonwealth of Virginia Agency Procurement and Surplus Property Manual, and the Commonwealth of Virginia Vendors Manual copies of which are available at [www.eVA.virginia.gov](http://www.eVA.virginia.gov). The stated price(s) include shipping FOB destination unless otherwise stated in the body of the order. In addition, this order is subject to an eVA transaction fee in accordance with the eVA Fee Schedule a copy of



which is available at [www.eVA.virginia.gov](http://www.eVA.virginia.gov). This fee will be invoiced to your company, approximately 30 days after the order issue date specified above, by the Commonwealth of Virginia, Department of General Services. Any modification to these terms must be agreed to in writing by both parties prior to performance of this order.